
(2021) 08 SIK CK 0007
In the Sikkim High Court
Case No : Writ Petition (C) No. 04 Of 2021

Naina Kala Sharma & Ors

APPELLANT

Vs

Deepak Kumar Rai

RESPONDENT

Date of Decision : 09-08-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151

Code Of Civil Procedure, 1908 — Order 6 Rule 17

Protection Of Women From Domestic Violence Act, 2005 — Section 12, 18, 19, 20, 21, 22, 26

Citation : (2021) 08 SIK CK 0007

Hon'ble Judges : Meenakshi Madan Rai, J

Bench : Single Bench

Advocate : Yam Kumar Subba, N. Rai

Final Decision : Allowed

Judgement

Meenakshi Madan Rai, J

1. Heard Learned Counsel for the parties.

2. Learned Counsel for the Petitioners submits that he is aggrieved by the impugned Order in Title Suit No.03 of 2019 in the Court of the Learned

Civil Judge, West District at Gyalshing, dated 23.02.2021, on grounds that the Learned Trial Court rejected his petition filed under Order VI Rule 17

read with Section 151 of the Code of Civil Procedure, 1908 (for short, "CPC"). The attention of this Court was drawn to the application filed

before the Learned Trial Court and it was submitted that the Petitioner No.1 is the divorced wife of the Respondent therefore she has the right to stay

in the property she is occupying presently, as envisaged by Section 19 of the Protection of Women from Domestic Violence Act, 2005 (for short

â??D.V. Actâ?). That, this was the only amendment that he sought to insert in the Written Statement which was inadvertently omitted. That, the

Learned Trial Court vide the impugned Order however observed that the Learned District Judge in Title Suit No.43 of 2013 M(rs. Naina Kala

Sharma and Others vs. Deepak Kumar Ra)i held that the Defendants cannot be regarded as having any right, title and interest over the Suit

property and thereby rejected the application. Relying on the decision of the Honâ??ble Supreme Court in Vaishali Abhimanyu Joshi vs. Nanasaheb

Gopal Joshi (2017) 14 SCC 373, it was contended that the Petitioners have the right to insert this averment as provided by Section 26 of the D.V. Act.

Hence, the Learned Trial Court be directed to allow the amendment.

3. Per contra, Learned Senior Counsel for the Respondent submits that in the first instance, the petition under Order VI Rule 17 read with Section

151 of the CPC filed by the Petitioners does not even mention the proposed amendment and is therefore vague. That, when the amendment is vague,

it ought not to be allowed as held in Gurdial Singh and Others vs. Raj Kumar Aneja and Others (2000) 2 SCC 445. Reliance was also placed on

the decision of the Honâ??ble Punjab and Haryana High Court inR aghbinder Singh vs. Darshan Singh 1999 SCC OnLine P&H 1223. That,

Section 26 of the D.V. Act provides for reliefs only when a case under the D.V. Act is pending before the Learned Magisterial Court and no relief

accrues to the Petitioners in the instant Suit pending before the Court of the Learned Civil Judge. Hence, the petition be rejected as the observations

of the Learned Trial Court require no interference.

4. I have heard the rival contentions of Learned Counsel for the parties. I have also perused the records placed before me.

5. From the petition filed by the Petitioners under Order VI Rule 17 read with Section 151 of the CPC, before the Learned Trial Court, it can be culled

out that the following sentence is sought to be inserted in the Written Statement by way of amendment;

â??3. That the defendant no.1 is the divorced wife of the plaintiff, due to which, the defendant No.1 has right to stay in the shared property

as it is conferred by the section 19 of the Protection of Women from Domestic Violence Act, 2005 (sic).â??

6. At this juncture, it is relevant to go through the provisions of Section 26 of the

D.V. Act which provides as follows;

26. Relief in other suits and legal proceedings. (1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any

legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was

initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such

suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to

inform the Magistrate of the grant of such relief.

7. The mandate contained in Section 26 of the D.V. Act supra is therefore clear and requires no further elucidation. If any suit or legal proceedings

affecting the person is pending before a Civil Court, a Family Court or a Criminal Court, Section 26 gives an option to the aggrieved person to seek

any relief available under Sections 18, 19, 20, 21 and 22 of the Act in the said proceeding. I hasten to clarify that no independent application under the

D.V. Act is maintainable before the Civil Court or the Family Court if no proceedings are pending before them affecting the aggrieved person and the

Respondent. If this be the circumstance, then the party is required to approach the Magisterial Court in terms of the provisions of Section 12 of the

Act. That having been said, no anomaly arises in the instant matter should the amendment be allowed in view of the clear provision of Section 26

supra.

8. That apart, it is relevant to point out that this Court in S.P.Subba vs. Sukhim Yakthung Sapsok Songjumbho 2019 SCC OnLine Sikk 117, at

Paragraph 5 of the Judgment, has observed that;

5. The guiding principle for an amendment is whether the amendment sought is for the purpose of determining the real questions in

controversy between the parties apart from testing whether the amendment if allowed would cause injustice to the other side which cannot be

compensated in material terms. That having been said it would do well to be cognizant that technicalities of law ought not to hamper justice to the

parties, as it goes without saying that procedure is the handmaid to the administration of justice. Amendments are essentially to Shri S.P. Subba v.

Sukhim Yakthung Sapsok Songjumbho (Sikkim Limboo Literary Society) be allowed to prevent multiplicity of proceedings and for dispensing even

handed justice.â??

9. Concededly, the stage before the Learned Trial Court presently is for examination of the parties under Order X of the CPC, 4 2019 SCC OnLine

Sikk 117 hence in my considered opinion no prejudice is being caused to the Respondent as the matter is in the early stage of the trial. It is also

relevant to observe that the right, title and interest of the Petitioner No.1 has undoubtedly been settled in T.S. No.43 of 2013, however, the amendment

seeks to insert reliefs under Section 19 of the D.V. Act which, thus, has to be differentiated. Accordingly, the impugned Order dated 23.02.2021 is

hereby set aside. The amendment is permitted. The Learned Trial Court shall allow the amendment sought to be inserted in the Written Statement to

prevent obstruction of the course of substantial justice.

10. Writ Petition allowed and disposed of accordingly, as also I.A. No.01 of 2021.

11. The observations made hereinabove will have no consequences on the merits of the matter which shall be considered independently at the time of

trial.